

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

GEORGE A. JOHNSON,

Plaintiff,

v.

**US ARMY and INTERNAL REVENUE
SERVICE,**

Defendants.

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Civil Action No. **3:08-CV-1810-L**

ORDER


Before the court is Johnson's Complaint, filed October 10, 2008. Pursuant to Special Order 3-251, the complaint was referred to United States Magistrate Judge Irma C. Ramirez, on October 10, 2008. On October 24, 2008, the Findings, Conclusions, and Recommendation of the United States Magistrate Judge ("Report") was filed. In his Motion to Reconsider, filed October 31, 2008, Johnson makes an objection to the Report.

Johnson filed suit against the United States Army (the "Army") and the Internal Revenue Service (the "IRS") for the IRS's collection efforts on income that was erroneously reported by the Army. The magistrate judge found that the court lacked subject matter jurisdiction because Johnson failed to exhaust his administrative remedies as required by the Federal Tort Claims Act and 26 U.S.C. §§ 7422 and 7433. Johnson objects to the magistrate judge's findings and argues that he is permitted to sue the government because he no longer works for the Army. Pet. Mot. 2. According to Johnson, because he was discharged from the Army in 2002, he is no longer subject to laws prohibiting enlisted persons from suing the Army for negligence. *Id.* The magistrate judge's findings, however, are not based on Johnson's prior government employment or a perception that

he is currently employed by the government. The magistrate judge found that Johnson failed to meet the statutory prerequisites to filing suit and that, because of this failure, the court does not have jurisdiction over Johnson's suit. Johnson simply misunderstands the legal basis for the magistrate judge's findings. Therefore, the court **overrules** this objection and **denies** Johnson's Motion to Reconsider, which is based on this argument.

Having reviewed the complaint, file, record, and the Report in this case, the court determines that the findings and conclusions are correct. The magistrate judge's findings and conclusions are therefore **accepted** as those of the court. Accordingly, the court is without jurisdiction to entertain this matter and **dismisses without prejudice** the complaint.

It is so ordered this 18th day of November, 2008.


Sam A. Lindsay
United States District Judge